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May 30, 1997
Washington, D.C. 20554

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In the Matter of

Implementation of Section 25 of the Cable
Television Consumer Protection and
Competition Act of 1992

Direct Broadcast Satellite Service
Obligations

MM Docket No. 93-25

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REPLY COMMENTS OF KNOWLEDGE TV

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JEC Knowledge TV ("Knowledge") submits these reply comments in response to certain issues raised by other commenters in this proceeding to refresh the record on how best to implement the DBS educational programming set-aside. Knowledge reiterates its view, expressed in its comments filed April 28, 1997, that the Commission should adopt an inclusive definition of "noncommercial programming of an educational or informational nature"¹ in order to bring high quality educational programming, such as Knowledge, to the millions of homes served by DBS—particularly those in rural and isolated communities.

Knowledge is a 24-hour programming network delivering college- and graduate-level degree-awarding programs in association with over a dozen accredited public and private universities, as well as personal and professional development courses, documentaries, computer training, and other educational and informational programs on a

¹ 47 U.S.C. § 335(b)(1).

variety of topics. By providing technical facilities, administrative support, scholarships, and economies of scale in packaging and promoting universities' educational content, Knowledge enables many universities that might otherwise lack the necessary staff, infrastructure, or budget to reach individuals who are remote from educational institutions, whose schedules permit coursework only during selective hours, or who otherwise are unable to place themselves in a physical classroom as full- or part-time students. Knowledge's programming, and its unique role as a vehicle for delivering high quality educational programming to every person in the United States, is precisely what Congress envisioned when it required DBS providers to carry "noncommercial educational or informational programming."

One segment of the population that particularly benefits from the type of service offered by Knowledge is rural citizens—a population that deserves special consideration as the Commission develops rules that will define the pool of qualified programming. As several commenters from the land grant university community suggested,² the limited availability and high cost of access to satellite facilities prevent universities' distance learning programs from reaching many rural citizens. In enacting the public interest set-aside, Congress was aware that this particularly vulnerable segment of the population is both underserved by traditional educational institutions and an increasingly important consumer of DBS services. A programming service such as Knowledge, which today brings education and training to 25 million cable television subscribers, could serve the nation if it were carried on a DBS system. The Commission should adopt a definition of "educational or informational" programming broad enough to enable all educational institutions to reach a

² See comments of individuals from Ohio State University, Colorado State University, Texas A&M University, West Virginia University, and University of Kentucky.

wide audience, including the underserved rural community—whether that programming is delivered via a service such as Knowledge or through another vehicle.

The Commission is charged with the task of defining the range of programming that will satisfy the public interest requirements of the statute. In doing so, however, it should take care not to confuse the *substance* of the programming with the *supplier* of the programming by placing undue restrictions on the revenue sources of the entity that produces qualified public interest programming.³ As Knowledge noted in its initial comments, Congress placed no limits on the identity or funding of "national educational programming suppliers," specifying only that such suppliers may "includ[e] any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions."⁴ Only a tortured interpretation of this language—which is offered only by way of example—could yield a finding that qualified public interest programming must be supplied by a nonprofit entity or an entity not funded by advertising revenue.⁵

³ See Encore Media Corporation comments at 6 ("EMC urges the Commission to conclude that the DBS educational programming requirements . . . can be satisfied at least in part by carriage of any noncommercial educational or information programming, regardless of the nature of the supplying entity); America's Health Network comments at 5 (to "confine the list of qualified providers [to nonprofit, noncommercial, or public entities] would seriously and unnecessarily limit the variety and quality of the programming made available to viewers as part of the DBS public service obligation").

⁴ 47 U.S.C. § 335(b)(5)(B).

⁵ Some commenters have read such restrictions into the statute, despite the complete lack of evidence, in either the language or legislative history of the statute, to support them. See American Sky Broadcasting LLC comments at 15 (asserting that programming supplier should be nonprofit and not funded by advertising revenue); Children's Television Workshop comments at 5 (asserting that supplier should be nonprofit entity); Encore Media Corporation comments at 7 (asserting that programming should not contain commercial matter).

The rules should not be shaped to exclude the many vehicles which exist for delivering educational programming. Rather, as several commenters explained, the Commission should focus on the substance, presentation, and goals of the programming in determining whether that programming will be deemed "educational or informative."⁶ If particular programming is judged, by appropriate criteria, to be "educational or informative," the mere fact that it is supported by advertising revenue does not render it somehow non-educational or uninformative. By the same token, programming that is produced by a nonprofit entity or that is not supported by advertising revenue is not automatically "educational or informative" but must be judged by the same neutral criteria before it may be used to satisfy the public interest requirements of Section 335.

The Commission has consistently recognized the economics of the multichannel world, which relies on dual revenue streams to expand program choices while keeping costs down. For example, the Commission permits broadcasters to satisfy children's programming requirements with commercially supported programs. Indeed, in this proceeding, the Commission has already noted that programming produced by PBS, which itself employs enhanced underwriting, would be "noncommercial educational or informative" programming under the set-aside.⁷ When revenue is based entirely on subscription fees, programming tends to take the form of high-priced, optional premium channels. If the Commission were to adopt

⁶ See American Sky Broadcasting LLC comments at 15-16 ("the Commission should define [noncommercial educational or informational] programming in terms of its goals rather than its subjects").

⁷ *Implementation of Section 25 of the Cable Television Consumer Protections and Competition Act of 1992: Direct Broadcast Satellite Public Service Obligations*, Notice of Proposed Rulemaking, FCC 93-91, MM Docket No. 93-25 ¶ 43 (rel. Mar. 2, 1993).

rules in this proceeding prohibiting programming suppliers from accepting advertising revenue, many DBS consumers would be deprived of the benefits of educational programming, a result clearly inconsistent with Congress' goal of widely disseminating such programming.

Because administering an inclusive definition of "educational or informational" programming in a manner which promotes high quality, public interest programming and which is flexible enough to embrace innovative concepts would be a difficult and costly undertaking, Knowledge supports the proposal, outlined by several commenters,⁸ for a nonprofit "clearinghouse," sponsored by DBS providers and staffed by representatives of the DBS industry, public service organizations, and educational groups. As described by the commenters, this clearinghouse would set criteria for qualified public interest programming, review programming submitted, and certify as "qualified" programming that satisfies the criteria. Such an approach has the added advantage of minimizing Commission involvement in the constitutionally sensitive selection process.

⁸ See, e.g., comments of Satellite Broadcasting and Communications Association.

CONCLUSION

For the foregoing reasons, the Commission should adopt a broad definition of programming that is eligible for carriage on DBS channels set-aside for educational programming, in order to facilitate carriage of innovative arrangements such as Knowledge TV.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Paul Glist', written over a horizontal line.

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